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OFFICE OF PETITIONS

In re Application of
Agee, et al.
Application No. 09/878,789
Filed: June 10, 2001
Title: METHOD AND APPARATUS FOR
OPTIMIZATION OF WIRELESS
MULTIPOINT ELECTROMAGNETIC
COMMUNICATION NETWORKS

ON PETITION

In re Application of
Agee, et al.
Application No. 09/879,459
Filed: June 11, 2001
Title: METHOD AND APPARATUS FOR
OPTIMIZATION OF WIRELESS
MULTIPOINT ELECTROMAGNETIC
COMMUNICATION NETWORKS

This is a decision on the papers styled, Petition to Revive and Treat as Amendment, filed October 8, 2002, which have been treated as a petition under 37 CFR 1.137(b), to revive the above-identified application, and a petition under 37 CFR 1.182, to merge the above-identified application files.

Application No. 09/878,789 was deposited on June 10, 2001. However, Petitioner states, "the need for a number of corrections was realized as the Attorney realized (the next morning) that a draft version of the specification had been sent." To correct applicants filing error, on June 11, 2001, applicants filed the full version of the specification "with indication that it was a correction for the previous day's filing. Attorney presumed that the Patent Office would treat this as a Preliminary Amendment under

608.04(b)." The papers were accompanied by a cover letter directed to the application filed on June 10, 2001, but no application number was identified in the cover letter.¹ As a result of a Patent and Trademark Office (Office) error, the papers filed June 11, 2001, were processed as a new application and were assigned application No. 08/879,459 and a filing date of June 11, 2001.

A "Notice To File Missing Parts of Nonprovisional Application" was mailed in application No. 09/878,789 on August 13, 2001, requiring the basic filing fee, additional claim fees of \$769, the surcharge set forth in 37 CFR 1.16(e), a substitute specification in compliance with 37 CFR 1.52 and an abstract.

A "Notice To File Corrected Application Papers" was mailed in application No. 09/879,459 on August 20, 2001, requiring an abstract and Figures 1-5, 6A & 6B, 7A & 7B, 8-12, 13A & 13B, 14-37, 38A & 38B, 39-40 described in the specification.

In response, on October 8, 2002, titled for both applications, applicant filed a clean copy of the substitute specification, authorization to charge all necessary fees, and a duplicate set of drawings. Furthermore, on October 8, 2002, petitioner filed the instant "Petition for Revival of an Application Abandoned Unintentionally Under 37 CFR 1.137(b)" and also petitions for the Office's error be corrected by merging the file of application No. 09/879,459 into the file of application No. 09/878,789.

The petitions are GRANTED.

Application No. 09/878,789 became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Application (Notice) mailed August 13, 2001. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on October 14, 2001.

¹ A cover letter attached to the submission on June 11, 2001 states, "On June 10, 2001 I sent by Express Mail a less-completed version with 40 of the original 41 drawings, and have not obtained copies of them to send with this. I ask that the two documents be merged into a single application rather than become two independent applications."

Both applications will be returned to the Office of Initial Patent Examination for merging the file of application No. 09/879,459 into the file of application No. 09/878,789. The papers submitted on June 11, 2001 which became application No. 09/879,4598, shall be treated as a preliminary amendment. Thereafter, application No. 09/879,459 will no longer be an active serial number. As such, the "Notice To File Corrected Application Papers" mailed in application No. 08/879,459, on August 20, 2001, is moot.

The \$355.00 filing fee, \$120.00 claims in excess of 20 fee and \$1467.00 multiple dependent claims fee (total of \$1942.00) charged for 09/879,459 will be refunded to deposit account no. 50-0705.

All future correspondence concerning this application should be directed to application No. 09/878,789.

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 306-9200.



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